

RUSS, AUGUST & KABAT

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17 *Attorneys for Defendant*
18 BITPAY, INC.

19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**
21 **WESTERN DIVISION**

22 OX LABS, INC.,

23 *Plaintiff,*

24 vs.

25 BITPAY, INC. and Does 1-10,

26 *Defendants.*

Case No. 2:18-cv-05934-MWF-KS

**DEFENDANT BITPAY, INC.'S
PROPOSED STATEMENT OF
THE CASE**

Pursuant to L.R. 16-2 and the Court's Order Regarding Jury Trial (Dkt. 22), Defendant Bitpay, Inc. ("BitPay") submits the following statement of the case for the Court's consideration and use. BitPay will, however, continue to meet and confer with the plaintiff in an effort to submit a joint proposed statement of the case.

BITPAY'S PROPOSED STATEMENT OF THE CASE

This case concerns the virtual currency Bitcoin. The plaintiff is a business that enables its customers to buy and sell Bitcoins on its trading platform. The plaintiff erroneously credited 200 Bitcoins to the account of one of its customers in a transaction. The defendant is the customer that received the erroneously credited Bitcoins from plaintiff. At the time of the error, neither plaintiff nor defendant knew the error had occurred. The defendant ultimately discovered the error approximately nineteen months later and reported it to the plaintiff. The principal questions that the jury will be asked to decide are: (1) Must the defendant return 200 Bitcoins, at its current increased value, to the plaintiff?; (2) Should the plaintiff be awarded damages because the defendant either sold the erroneously-credited Bitcoins or refused to return 200 Bitcoins when the plaintiff asked for them to be returned?; (3) If damages should be awarded, in what amount?; and (4) Was the lawsuit filed too late?

I will now tell you more about the parties to the lawsuit and the facts underlying their claims and defenses.

Plaintiff, Ox Labs, through its subsidiary SFOX (collectively "Ox Labs"), operates a trading platform enabling people to buy and sell virtual currency, including Bitcoin. Defendant BitPay helps companies accept virtual currency, including Bitcoin, as a form of payment. As part of its regular operations, BitPay buys and sells Bitcoin. At the time of the issues raised in this lawsuit, BitPay was

1 a customer of Ox Labs and had an account on the SFOX platform to trade virtual
2 currencies, including Bitcoin.

3 On July 10, 2015, Ox Labs inadvertently credited 200 Bitcoins to BitPay's
4 account in two deposits of 100 Bitcoins. The parties disagree about the meaning of
5 the deposit and BitPay disputes whether Ox Labs is the owner of 200 erroneously
6 credited Bitcoins, but the parties agree that Ox Labs is the entity that made the
7 erroneous credit to BitPay's account.

8 At the time of the crediting error, neither Ox Labs nor BitPay knew the
9 crediting error had occurred. On February 16, 2017, BitPay contacted Ox Labs to
10 inquire about the erroneous credit. Ox Labs confirmed that there was an erroneous
11 deposit and demanded that BitPay return 200 Bitcoins to Ox Labs on May 23,
12 2017. BitPay, however, refused Ox Labs's demand on June 6, 2017.

13 At all times relevant to this matter, BitPay possessed more than 200
14 Bitcoins. Although BitPay acknowledges that it possessed and possesses 200
15 Bitcoins, however, BitPay does not admit that such Bitcoins are connected in any
16 way to the crediting error.

17 Anybody who possessed Bitcoins in August 2017 and October 2017
18 received the same number of other virtual currencies, Bitcoin Cash and Bitcoin
19 Gold, as a result of what those in the industry call "hard forks." A hard fork is like
20 a stock split. On November 15, 2018, anybody who possessed Bitcoin Cash
21 received the same number of Bitcoin SV as a result of another "hard fork."

22 Plaintiff Ox Labs is pursuing two claims against Defendant BitPay:

23 Claim 1: BitPay is liable for conversion under California law for
24 selling and/or refusing to return the 200 erroneously credited Bitcoins upon
25 demand.

26 Claim 2: BitPay is liable for unjust enrichment under California law
27 for keeping and/or selling the 200 erroneously-credited Bitcoins.
28

1 If BitPay is liable for either claim, Ox Labs will ask the jury to return 200 Bitcoins
 2 and the “hard fork” benefits to Ox Labs. Alternatively, Ox Labs will ask the jury
 3 to award monetary damages to compensate it for its loss of the 200 Bitcoins.
 4 BitPay denies that Ox Labs is entitled to any of these remedies.

5 Defendant BitPay’s is pursuing the following defenses to Ox Labs’ claims:

6 Defense 1: The claims are barred by a two-year statute of limitations on
 7 conversion of intangible property and unavailability of a claim for unjust
 8 enrichment when there is an adequate remedy at law.

9 Defense 2: The claims are barred by a two-year statute of limitations on
 10 conversion of intangible property and unavailability of a claim for unjust
 11 enrichment when there is an adequate remedy at law.

12 Defense 3: The claims are barred because BitPay no longer has the Bitcoins
 13 at issue to return.

14 Defense 4: The remedy for conversion has already been tendered, which is
 15 \$57,216.55 that BitPay alleges was the profits it made from the 200 erroneously-
 16 credited bitcoin.

17 Ox Labs denies that its lawsuit was filed too late or that any of BitPay’s
 18 defenses have merit.

19
 20 Respectfully submitted,

21 DATED: November 4, 2019

22 RUSS, AUGUST & KABAT
 Benjamin T. Wang
 James S. Tsuei

23 By: /s/ Benjamin T. Wang

24 Attorney for Defendant
 25 BitPay, Inc.

CERTIFICATE OF SERVICE

I hereby certify pursuant to the Federal Rules of Civil Procedure and LR 5-3 and 5-4 that the foregoing **DEFENDANT BITPAY, INC.'S PROPOSED STATEMENT OF THE CASE** was served upon the attorney(s) of record for each party through the ECF system as identified on the Notice of Electronic Filing on November 4, 2019.

By: /s/ Benjamin T. Wang

Benjamin T. Wang

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